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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SEP 18 2000

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Chair

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Administrator Carol M. Browner
U. S. Environmental Protection Agency
1200 **Pennsylvania** Avenue, NW (1101)
Washington, DC 20460

Dear Administrator Browner:

At their September meeting, the Local Government Advisory Committee (LGAC) approved **forwarding** the enclosed recommendations to you. These **recommendations**, entitled "Recommendations Regarding Small Community Outreach and Compliance Assistance **Analysis** for EPA's Proposal of the National **Primary Drinking Water Standard on Arsenic**," were developed by the Small Community Advisory Subcommittee. These recommendations are submitted as part of the public **comment** period for the **rulemaking** and the **Committee** understands that we will not receive a direct response from you, rather that **the** recommendations will be docketed and the response will be part of the final **rulemaking**.

The LGAC agrees with **SCAS'** recommendation that the Environmental Protection Agency should reassess its **determination** of the financial impact of the proposed regulation on small communities -- regardless of the final standard that is eventually promulgated. The LGAC believes that it does not have sufficient **knowledge** or understanding of the science behind the Agency's proposal to determine whether or not it could support setting the standard at any particular level.

The LGAC believes that the rationale behind the establishment of a new standard for arsenic should be based on information that can be readily understood and accepted by the public so that the attendant cost will be tolerated. There appears to be little consensus about the issue among local governments at this time.

We would be pleased to respond to any questions you may have about the recommendations. Ms. Caldwell-Johnson can be reached at (515) 286-3447 and Mayor Morton at (716) 422-4841.

A handwritten signature in black ink, appearing to read "Tere Caldwell-Johnson". The signature is fluid and cursive, with a large loop at the end.

Tere Caldwell-Johnson, Chair
Local Government Advisory Committee
Subcommittee

Sincerely,

A handwritten signature in black ink, appearing to read "Anne R. Morton". The signature is cursive and elegant, with a large loop at the end.

Anne R. Morton, Co-Chair
Small Community Advisory

Enclosure

Recommendations

Regarding

Small Community Outreach
and
Compliance Assistance Analysis

for

EPA's Proposal

of the

National Primary Drinking Water Regulation on Arsenic

Submitted

by the

Small Community **Advisory** Subcommittee

of the

Local Government Advisory Committee

Introduction

As ~~part~~ of our ongoing charge to advise the EPA of small community needs and concerns related to our environment and health, the Small Community Advisory Subcommittee (SCAS) of the Local Government Advisory Committee has been monitoring EPA's small entity outreach efforts as part of the recently proposed drinking water regulation for Arsenic.

SCAS met on June 20, 2000 with EPA Office of Water officials to discuss the recently proposed ~~rule~~. Information was presented on the regulation history, health effects of arsenic exposure, treatment techniques, and cost of treatment at various level reductions. In addition, information on the health benefits of the proposed rule based on EPA's cost analysis for bladder cancer ~~incident/death~~ reductions and possible reductions for lung cancer were presented. During the same meeting, Dr. Michelle Fry presented a compliance cost analysis on the proposed rule developed specifically for the American Water Works Association (AWWA).

At the June meeting, SCAS established a working group on the proposed rule assigned to ~~draft~~ comments so that SCAS/LGAC could submit formal recommendations to the Administrator by September 20, 2000. The working group reviewed the written record of the small entity outreach ~~conducted~~ by the Office of Water including the *Report of the Small Business Advocacy Review Panel on EPA's Planned Proposal of the National Primary Drinking Water Regulation for Arsenic*, a summary of written comments submitted by small entity representatives, and other written comments submitted for the record. The working group then ~~met~~ with Office of Water officials again to clarify uncertainties about elements of the Agency's cost analysis and treatment technologies. ~~These recommendations are being shared with appropriate~~ EPA officials for a technical review.

Impact of Proposed Rule on Small Communities

The proposed national primary drinking water regulation for arsenic will primarily affect small communities across the nation. EPA estimates 1,214 communities will be affected by a reduction of the arsenic level to 20 ppb. Of that amount, 1,135 or 93.5% are small communities. Similarly, a reduction to five (5) ppb MCL reveals that 6,573 small communities will be affected compared to ~~the~~ 399 larger cities (population greater than 10,000). Comparing these numbers to the total number of local governmental indicates only 6.5% of large communities are affected by the rule as compared to nearly 20% of small communities (less than 10,000 population).

Likewise, the proposal will pose extensive financial consequences that disproportionately affect small communities. First, the cost of compliance falls primarily on America's small communities. Consider that EPA's estimate of \$85 per year/per household for communities with fewer than 10,000 persons to address arsenic levels is 3.03 times greater than communities with populations greater than 10,000.

Furthermore, AWWA's more recent financial impact analysis is 3.4 to 3.9 times higher than EPA's estimates. Should AWWA's estimate prove more accurate, the average small community

resident's annual bill would increase between \$288 and \$324 to address arsenic alone. SCAS's own efforts to assess the two estimates suggest the higher costs may be closer to the actual costs. For instance, **Gordon**, Nebraska, with a median household income of \$18,411, has arsenic levels of **approximately** six ppb. Gordon's analysis of annual **compliance** costs shows that each household in town will have to spend an **additional \$267** to meet a three ppb arsenic MCL.

Finally, the lower the standard, the higher the costs **facing small communities**. EPA estimates that it will cost **\$667.3** million to comply with an MCL set at 3 ppb. This is ten and a half times greater **than** the estimated cost to comply with an MCL set at 20 ppb.

Recommendations

Maximum Contaminant Level (MCL)

SCAS recommends that EPA restrict the MCL to a value no lower than 20 parts per billion (ppb). We acknowledge the need for action, but note that this recommendation is not provided as a **separate** and stand alone endorsement. Rather, it is presented in **concert** with the remainder of this document as an essential element of a plan to address the **impact** of arsenic regulations on small communities. There have been significant questions raised about the strength of the scientific basis for the proposed national primary drinking **water** regulation for arsenic. But there is no doubt that small communities will be impacted more **often** and to a greater financial degree by the proposal.

Affordability Analysis

SCAS recommends that EPA reassess its determination of the financial impact on small communities based on the national level of affordability screen and a national median income of \$30,000. EPA's use of **\$30,000** had far reaching implications. The development of the "decision tree" creating parameters for cost assessment, affordability determinations, suitability for variances and waivers **as well as** financial assistance are based on an income level beyond many small and rural **communities**. Reassessment provides **useful** information to guide the Agency in its approach to assisting small **communities**.

Consider the case of Benavides, Freer, and San **Diego**, Texas with populations of **1,784, 3,271 and 4,072** respectively. Any **MCL** lower than 50 ppb will affect all of these communities. The median household incomes for those communities are **\$12,059, \$14,199 and \$14,923** with **33%, 31% and 35%** of families below poverty levels, respectively. The cost to connect these three communities to the nearest alternative supply has been calculated to be approximately \$15,000,000 and the annual cost is estimated at \$2,521,000. The annual household cost would be \$966 which is seven percent of the average median household income for these three small communities.

This example clearly illustrates that the national level of affordability, set by EPA, is not met. This means that these small town Texas residents will be facing compliance costs that even by EPA's

own national level of affordability will be unaffordable. Reassessment will provide EPA with the data it needs to address what we see is a national affordability problem for the proposed national **primary** drinking water regulation for arsenic.

Impacted Small Communities Report

SCAS recommends that, as part of the reassessment, **EPA** produce a report including 1) a **list** of the small communities (less than 10,000) whose estimated compliance cost will be greater than two and half percent (national level of affordability) of the affected community's median household income; and 2) site-specific detail on the impact; potential compliance approaches and available compliance assistance and consider this information in the development of the final rule.

This **information** should include but not be limited to the associated direct and indirect costs (including solid **waste** and wastewater by-products) as well as the most economically, technically, and environmentally feasible treatment. In particular, the following factors should be addressed by the report:

- complexity of current treatment techniques (not “**developing**” techniques) and the staffing problems associated with any new treatment in the evaluation of the most efficient method;
- financial constraints involved **in training** or attracting skilled personnel including costs associated with paying higher salaries for operators with more extensive technical **backgrounds**;
- skilled labor force availability limitations for small communities;
- site specific requirements for pretreatment and associated costs.

Additional Treatment Analysis

SCAS recommends **EPA** conduct additional demonstration projects in other areas of the country with varying quality parameters. **The** limited demonstration projects used by EPA to determine the most effective treatment methods are not representative of the pre-treatment and treatment issues facing all small communities and the problems created by varying water qualities. These projects will provide valuable information and assistance to communities unable to afford costly chemical and engineering analysis. On a more fundamental level, the information generated by these additional demonstration projects will help prevent wasting resources on ineffective treatments and guide small community systems toward solutions.

Small Community Arsenic Compliance Assistance Program

SCAS recommends **EPA** develop a Small Community Arsenic Compliance Assistance Program to address infrastructure, technology needs and a strategy for **waivers** and variance.

Formulation of the program goals, objectives, and methods to accomplish such must include an appropriate level of stakeholder involvement including but not limited to SCAS review and recommendations.

In addition to the affordability and treatment issues that have been raised, there are other unresolved technical issues that may further increase the impact on small communities. The Small Community Arsenic Compliance Assistance Program should be a **comprehensive program addressing all** of these issues. For instance, regardless of **EPA's** intent to forego designating most of the "waste **product**" as toxic or hazardous materials, disposal of the resulting brine or sludge will further tax small communities' wastewater and solid waste facilities—many of which are struggling to meet or maintain current compliance levels. Additional funds to alter or build solid waste and wastewater facilities may well be needed in addition to technical assistance to insure the new facilities are managed in an environmentally safe manner.

Although **EPA** has considered increased use of private groundwater wells as a possibility, SCAS is concerned there will be a significant number of service connection departures from small community water systems to independent, unregulated—but far cheaper—ground water wells. This shift will not **only** defeat the purpose of providing health protection **from** constituents such as arsenic but will ultimately strike at the very core of protection against water **borne disease**. As these small community providers lose customers, the cost to provide service will escalate, compliance will decline, and the health of small town residents will be imperiled. Therefore, SCAS additionally recommends that EPA monitor the situation and be **prepared** to provide the necessary assistance to such systems.

The Safe **Drinking Water Act** provides a statutory basis for small **community** waivers and variances. In light of the extensive financial, technological and managerial capacity issues associated with compliance with the proposed national primary drinking water regulation for arsenic, SCAS further recommends that, as a part of the overall Small Community Arsenic Compliance Assistance Program, EPA develop a small community waivers and variance strategy after sufficient consultation with appropriate stakeholders including but not limited to SCAS review and recommendations.

Additional Scientific Studies

SCAS recommends that EPA arrange for the additional studies as outlined in the **NCR/NAS** report and any additional research recommendations by **EPA's** Science Advisory Board. According to the National Academy of Sciences Report, Arsenic in Drinking Water, 1999—a request by EPA through the National Research Council—there are numerous areas and factors that warrant further study and consideration. Among those are studies related to **low** dose and low concentration exposure, factors related to heredity, **diet/nutrition**, age and sex as well as studies targeting residents of the United States.

SCAS recommends that EPA provide SCAS annual updates on the implementation progress, results achieved, health benefits realized, and implementation status of the preceding recommendations.

Conclusion

In conclusion, **SCAS** is committed to conveying the message of the citizens we have been appointed to represent. This regulation has the potential to substantially affect Americans in over 6,000 small communities. **EPA** must incorporate these recommendations into a fair, long term and systematic plan to assist small communities in complying with the arsenic regulation at a MCL no lower than 20 ppb.